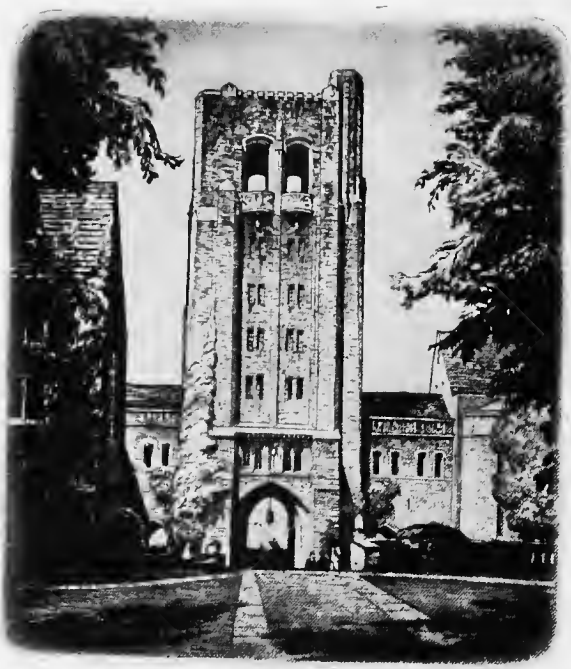

Statement of Cases to be argued in Cornell University Court, Fall Term, 1895.

No. 1.

SUPREME COURT—CORNELL UNIVERSITY.

JOHN JURGENS, *Plaintiff and Respondent.*	..... *Att'y for Respondent.*
vs.	
INSURANCE CO., *Defendant and Appellant.*	..... *Att'y for Appellant.*

Contract upon a policy of marine insurance issued by the defendant, insuring the plaintiff in the sum of $5,000 upon merchandise on board the schooner William Wallace *at and from* Chicago to Buffalo. The vessel and cargo became a total loss on the voyage. On the trial it was conceded that the schooner was seaworthy when the policy issued, but there was proof tending to show that she became unseaworthy before she sailed from Chicago. The defendant asked the court to charge that if the jury found that the schooner was unseaworthy when she sailed, then the plaintiff could not have a verdict. The court refused so to charge, and to its refusal the defendant excepted. A verdict was found for the plaintiff, and the case now comes up on the defendant's exception to the refusal to charge.

No. 2.

SUPREME COURT—CORNELL UNIVERSITY.

THE PEOPLE OF THE STATE OF NEW YORK, *Plaintiff*, *vs.* ARCHIBALD BARTON, *Defendant.*	..... *District Attorney.* ..... *Att'y for Defendant.*

Defendant was tried and convicted under an indictment for murder in the first degree. He now moves for a new trial upon affidavits which establish the fact that one of the jurors who acted at the trial was then upwards of sixty years of age, which is the age limit at which a juror is qualified to serve. The district attorney admits that such was the fact, but maintains that there was no mistrial by reason thereof. The point was not raised at the trial. Assuming that the court has the power to grant defendant's motion under the practice and procedure controlling such applications, is he entitled to the relief sought?

No. 3.

SUPREME COURT—CORNELL UNIVERSITY.

ROSS THURSTON,
Plaintiff,
vs.
HENRY HYDE,
Defendant.

Att'y for Plaintiff.

Att'y for Henderson.

Motion to compel purchaser at receiver's sale to complete his purchase of certain real estate.

Plaintiff and defendant were partners. They purchased real estate as a site for the business of the co-partnership. The money paid for it was charged against said property on the books of the firm as disbursements. Insurance and taxes were paid upon said property by the firm. Title was taken in the individual names of the partners. No express agreement as to the ownership of the lands was made between them. The firm becomes insolvent. A receiver is appointed in this, an action for an accounting and settlement. Receiver sells the said real estate to one William Henderson, who refuses to complete his purchase because the wife of defendant refuses to sign the deed of such real estate. Will he be compelled to accept the deed?

No. 4.

SUPREME COURT—CORNELL UNIVERSITY.

THE PLAINFIELD PIANO CO.,
Plaintiff and Appellant,
vs.
THOMAS DENNISON, *et al,*
Defendants and Respondents.

Att'y for Appellant.

Att'y for Respondents.

The plaintiff is a foreign stock corporation. It had recovered a judgment against the Ithaca Retailers Co., a domestic corporation, on account of goods sold. Defendants are directors of said Ithaca Retailers Co., and as such had failed and neglected to file an annual report as required by Chap. 688 of the Laws of 1892. Prior to the commencement of this action plaintiff had failed to comply with the requirements of §§ 15 and 16 of the General Corporation Law of the State of New York.

On the trial of the action at Circuit the judge granted defendants a non-suit by reason of plaintiff's failure to file the required certificate, and afterwards denied plaintiff's motion for a new trial. Plaintiff appeals from the judgment and order to this court.

No. 5.

SUPREME COURT—CORNELL UNIVERSITY.

THE PEOPLE, *ex rel.* RUFUS PRATT, *Plaintiff*, *vs.* HENDERSON STONE, Keeper of the City Prison, *Defendant*,	..... *Att'y for Plaintiff.* ..... *Att'y for Defendant.*

The Revised Constitution of the State of New York, Art. VI, Sec. 22, provides that "local judicial officers provided for in sections 17 and 18 in office when this article takes effect, shall hold their offices until the expiration of their respective terms." Police justices in New York City in office when the article took effect had been appointed for terms having from one to five years yet to run under the statute. The legislature passes a bill which becomes law, on May 20, 1895, providing that the terms of all such police justices shall expire on the 1st day of July following. G., one of such police justices, who had been appointed for a term ending Jan. 1, 1905, issues a warrant of commitment otherwise regular after such date to the keeper of the city prison, who receives and confines Pratt by virtue thereof.

Habeus corpus. Is the relator entitled to his discharge?

No. 6.

SUPREME COURT—CORNELL UNIVERSITY.

THE PEOPLE OF THE STATE OF NEW YORK, *Respondent,* *vs.* HARMON DREW, *Appellant.*	..... *Att'y for Respondent.* ..... *Att'y for Appellant.*

Prosecution for bigamy. Appeal by defendant from judgment of conviction. Appellant testified in his own behalf on the trial that he had left the state of Indiana about three years ago leaving his wife behind, she refusing to come with him, and had taken up his residence in Ithaca, where he had ever since resided and still resides. That he had received a newspaper containing an account of a railroad accident in which a woman having the same name as his wife was killed. That several days thereafter he went to the place where the accident occurred and saw the dead woman's body. Under the belief that it was the body of his wife he married again in New York. His first wife subsequently appeared, not having been in the accident, and upon indictment appellant was tried by a jury and found guilty.

Should the judgment of conviction stand?

No. 7.

SUPREME COURT—CORNELL UNIVERSITY.

GEORGE JENNINGS,
Plaintiff,
vs.
HIRAM MANDERVILLE,
Sheriff, &c.,
Defendant.

Att'y for Plaintiff.

Att'y for Defendant.

The A. & B. Co., a manufacturing corporation, by [redacted]hority of its board of directors, transfer all its personal assets, of the value of $5,000, to plaintiff, who is its president, to apply on a loan of $6,000 made by him to the corporation. A. on the following day obtained judgment against the corporation and the sheriff levied on the same assets transferred to plaintiff, who now sues the sheriff for conversion. The corporation had no other property. The case is submitted upon an agreed statement of facts. There are no statutory regulations on the subject.

No. 8.

SUPREME COURT—CORNELL UNIVERSITY.

LAWRENCE LATIMER,
Plaintiff,

vs.

NORTON POLLARD, *et al*, as Mayor and Aldermen of the City of Ithaca,
Defendants.

Att'y for Plaintiff.

Att'y for Defendants.

The Common Council of the City of Ithaca, under authority of a special act of the legislature, proposes to levy a tax upon the taxable property within its limits to raise the sum of $10,000 to buy coal and wood and to sell same to the inhabitants of Ithaca for fuel. Plaintiff, an owner of real estate situate in the city, brings a taxpayer's action to restrain the levying of such tax and now applies for a temporary injunction forbidding aciion thereon by the council *pendente lite.*

Is he entitled to the relief sought?

Statement of Cases to be argued in Cornell University Court, Fall Term, 1895.

No. 9.

SUPREME COURT—CORNELL UNIVERSITY.

PERKINS,
Plaintiff and Appellant,
vs.
UNIVERSAL TAILORING CO.,
Defendant and Respondent.

Att'y for Plaintiff.

Att'y for Defendant.

Action for conversion. One Smith purchased cloths which had been stolen from plaintiff and entered into a contract with defendant to make up the cloths into trousers. Defendant performed the contract and delivered the trousers to Smith, except forty pairs (out of a total of two hundred), which Smith refused to receive because not according to contract. Plaintiff subsequently demanded the cloths of defendant, who tendered ~~the~~ the forty pairs of trousers, but refused to deliver the others on the ground that they had already been delivered to Smith. Plaintiff refused the forty pairs and brought this action for the conversion of the cloths. At the close of the plaintiff's case the court dismissed the action. Plaintiff appeals from this judgment and from an order denying a new trial.

No. 10.

SUPREME COURT—CORNELL UNIVERSITY.

FIRST NATIONAL BANK, *Plaintiff and Appellant,* *vs.* F. W. TURNER & CO., *Defendant and Respondent.*	*Att'y for Appellant.* *Att'y for Respondent.*

Action on a bill of exchange which reads as follows:

ITHACA, N. Y., Jan. 10, 1895.

$750.

Three months after date pay to the order of Henry Fullerton seven hundred and fifty dollars, with exchange, and charge to my account.

GEORGE ALLERDYCE.

To F. W. TURNER & CO.,
Peoria, Ill.

On the bills appears: "Accepted, F. W. Turner & Co." It is indorsed in blank by Henry Fullerton. Plaintiff is a *bona fide* holder for value.

The defense is fraud on the part of the drawer and payee, and want of consideration. The trial court ruled that the bill is non-negotiable, and, as the fraud was established, directed a verdict for the defendant. Plaintiff appeals.

No. 11.

SUPREME COURT—CORNELL UNIVERSITY.

MARY WELLING,
Plaintiff and Respondent,
vs.
ANDREW WELLING,
Defendant and Appellant.

Att'y for Respondent.

Att'y for Appellant.

Action on a promissory note. Defense, noconsid eration, or illegality of consideration.

Plaintiff and defendant are husband and wife. Plaintiff left defendant under circumstances which entitled her to a divorce and for the purpose of procuring the same. Defendant agreed that if plaintiff would give up her purpose to procure a divorce and return to her marital relations, he would give her $10,000. The proposition was accepted; the note in question was executed and delivered in pursuance of the agreement, and plaintiff returned to her marital relations.

Verdict for the plaintiff. Defendant appeals.

No. 12.

SUPREME COURT—CORNELL UNIVERSITY.

MURRAY,
Plaintiff and Appellant,
vs.
WILKINSON,
Defendant and Respondent.

Att'y for Appellant.

Att'y for Respondent.

Action for damages. Defendant is a contractor in the city of A, and as such, employs a large number of workmen. Plaintiff is a merchant in the same city. Owing to a disagreement between plaintiff and defendant, the latter requested all the workmen in his employment to withdraw their patronage from plaintiff and announced that he would not employ any workmen who disregarded his request. He subsequently discharged workmen who continued to deal with plaintiff, and he refused to employ any except those who promised not to deal with plaintiff. In consequence, plaintiff was largely damaged in his business.

These facts appeared upon the trial. At the close of plaintiff's case the court, on motion of the defendant, granted a non-suit. Plaintiff appeals from the judgment and from an order denying a new trial.

No. 13.

SUPREME COURT—CORNELL UNIVERSITY.

IN THE MATTER OF THE APPLICATION OF GEORGE S. SHERMAN.

Att'y for Appellant.

Att'y for Respondent.

Sherman employed one Bowdoin, an attorney at law, to collect moneys from the United States. He received $2,000, and on demand refused to pay it to Sherman, who thereupon began summary proceedings to recover it by attachment. An order was granted *ex parte* on an affidavit setting out the foregoing facts, directing the attorney to show cause why he should not pay the money. On the return of the order to show cause the attorney produced affidavits showing that after the demand and refusal and before this proceeding was begun, the United States notified him that the money was paid from the treasury by mistake, and that it claimed to have it returned. An order was nevertheless made directing the attorney to pay the money to Sherman forthwith. The attorney obtained a stay of proceedings and appealed from the order. The case is now before the court on the appeal.

No. 14.

SUPREME COURT—CORNELL UNIVERSITY.

MILLS, *Plaintiff*, *vs.*	..... *Att'y for Plaintiff.*
TUPPER, *Defendant*	..... *Att'y for Defendant.*

Motion to continue a preliminary injunction till final decree.

The legislature of the state of Illinois granted to the World's Columbian Fair Commission the right to use Jackson Park, a public park in Chicago, from May 1, 1893, to December 1, 1893, for the purposes of a public exhibition, to enclose the park and to charge an admission fee to visitors. The commission advertised for sale to the highest bidder the exclusive right to take photographs within the enclosure during the period aforesaid. The plaintiff bid $18,000, was the highest bidder, and the commission accepted his bid and sold him the right. The defendant secretly conveyed a camera into the enclosure and took photographs of the buildings erected there by the commission, of the grounds and people, and sold large quantities of them in New York and elsewhere. The plaintiff began a suit in equity to obtain a permanent injunction preventing the defendant from taking and selling the photographs. On affidavits setting out the foregoing facts, a preliminary injunction was granted *ex parte*. The matter now comes before the supreme court in the State of New York, on motion to continue the injunction *pendente lite*.

No. 15.

SUPREME COURT—CORNELL UNIVERSITY.

ANDERSON, *Plaintiff and Appellant,* *vs.* KINGFISHER NATIONAL BANK, *Defendant and Respondent.*	..... *Att'y for Plaintiff.* ..... *Att'y for Defendant.*

Action against defendant for loss occasioned by negligence in collection of a promissory note.

Plaintiff, resident at Kingfisher, Oklahoma, held a note payable in New York. He deposited the note with defendant for collection. Defendant sent it to its correspondent bank in New York, which negligently failed to present the note when due in consequence of which the indorsers were discharged. The maker is worthless, and the plaintiff sues the defendant for the damages sustained.

The court non-suits the plaintiff, who appeals from an order denying a new trial.

No. 16.

SUPREME COURT—CORNELL UNIVERSITY.

HENRY, *et al*,
Plaintiffs and Respondents,
vs.
MORRISON,
Defendant and Appellant.

Att'y for Respondent.

Att'y for Appellants.

Proceeding by creditors of the Allegheny Land Company, an insolvent corporation, to set aside an assignment for the benefit of creditors as fraudulent and void.

The assignment preferred, among other creditors, John Simpson, to whom the corporation had given a promissory note for borrowed money, such note being indorsed by three of the directors of the corporation. The note had been dishonored and the liability of the directors as indorsers had been duly fixed.

The court set aside the assignment on the ground that it made these directors preferred creditors. The assignee appeals.

There is no statute forbidding preferences by an insolvent corporation.

Statement of Cases to be argued in Cornell University Court, Fall Term, 1895.

No. 17.

SUPREME COURT—CORNELL UNIVERSITY.

BARKER, *Plaintiff and Appellant,* *vs.* ANDREWS, *Defendant and Respondent.*	..... *Att'y for Plaintiff.* ..... *Att'y for Defendant.*

Andrews, while digging a post hole for Barker on Barker's land, finds a box of coin and plate which he removes and appropriates to his own use. No owner appears and the proof in the case indicates that this treasure was buried some fifty years ago, about the time of an Indian massacre. This action was brought by Barker to recover the value of the property, and resulted in a non-suit. From the judgment entered on such non-suit the plaintiff appeals to this court.

No statutes bearing upon this subject exist in the state where the cause of action arose.

No. 18.

SUPREME COURT—CORNELL UNIVERSITY.

MARTIN, *Respondent.*	
vs.	*Att'y for Respondent.*
LARCHMONT, *Appellant.*	*Att'y for Appellant.*

One Gordon being in possession of a horse belonging to Martin, converted him to his own use and sold him to defendant Larchmont. Larchmont, on demand, refused to give him up. This action is brought in trover to recover of Larchmont the value of the horse. On the trial Larchmont put in evidence a judgment in Martin's favor for the value of the horse, in an action brought by Martin against Gordon upon a count for goods sold and delivered. From a judgment in plaintiff's favor defendant appeals to this court.

No. 19.

SUPREME COURT—CORNELL UNIVERSITY.

MILES, *Respondent.* *vs.*	..... *Att'y for Plaintiff.*
WALDON, *Appellant,*	..... *Att'y for Defendant.*

Defendant Weldon is the owner of a horse which he kept at pasture in a field adjoining the highway. The field was securely fenced. Certain parties in the night time and unknown to defendant, desiring to make a short cut across the country, took down a portion of the fence and passing through, left it down. The horse left the field and crossing the highway broke into a lot of plaintiff's and kicked one of plaintiff's sheep so that it died. This action was brought to recover in trespass and for the value of the sheep killed. It is admitted that there was no negligence in either party and that plaintiff had no reason to believe that his horse was of an evil disposition or inclined to do mischief or break down fences. The Court instructed the jury that plaintiff was entitled to recover the value of the sheep and damages for the trespass to real property. Defendant excepted to each proposition of the charge. Verdict and judgment for plaintiff from which defendant appeals to this court.

No. 20.

SUPREME COURT—CORNELL UNIVERSITY.

L. H. PARKER & CO.,
Plaintiff and Appellant.
vs.
HENRY STRONG.
Defendant and Respondent.

Att'y for Appellants.

Att'y for Respondent.

Action upon the following contract:

"We hereby sell to Henry Strong one piano for the price of $500, to be paid for in installments of $25 a month. The title to the piano is to remain in us until the full purchase price is paid, and on default in the payment of any instalment we are to be free to retake said piano and to retain as rent all installments theretofore paid. L. H. PARKER & CO.

"I hereby agree to the terms of the above contract.
HENRY STRONG."

The piano was delivered to the defendant, who paid $200 in installments as agreed. Before another installment was due the piano was destroyed by fire without the fault of either party. The trial court directed a verdict for the defendant. Plaintiff appeals.

No. 21.

SUPREME COURT—CORNELL UNIVERSITY.

ARMITAGE, *Plaintiff and Respondent,* *vs.* COWAN, *impleaded, etc.,* *Defendant and Appellant.*	..... *Att'y for Respondent.* ..... *Att'y for Appellant*

Armitage, in September, 1894, placed in Masterson's grain elevator 10,000 bushels of wheat, taking a receipt therefor, as follows :

"Received in store from Armitage 10,000 bush. wheat, subject to the order of Armitage, on surrender of this receipt and payment of storage charges. It is agreed that the grain may be stored with any other grain of same kind and quality."

This grain was poured into a bin extending from the lower floor of the elevator nearly to the roof, and which already contained a large quantity of grain deposited by Masterson himself, and other outside receipt holders. Thereafter, from time to time, grain was drawn from said bin for sale or to satisfy receipt holders, and other grain was put in in different amounts.

About two months after the deposit in question, and when the bin was about half full, the upper floors of the bin were shut off from the lower, and to prevent heating, wheat deposited thereafter did not mingle with that below. All the wheat below was soon drawn off to meet obligations on receipts or for sale.

Masterson having failed about four months after Armitage's deposit, and before anything had been drawn on that receipt, and several suits having been brought with reference to the wheat left on hand, this suit was brought in equity to determine the rights of the several parties claiming an interest. At the time of the failure there were 30,000 bushels of wheat of this quality in the bin in one mass, and outstanding receipts for 60,000 bush., all, except that of plaintiff's, for wheat deposited after the change of mass. The decree awarded to plaintiff an undivided one-sixth interest in the wheat on hand, and ordered a sale. Defendant Cowan, who claims that Armitage should not share in this wheat, appeals to the Court from such decree.

No. 22.

SUPREME COURT—CORNELL UNIVERSITY.

HAMILTON, *Plaintiff and Appellant,* *vs.* BRIDGES, *Defendant and Respondent.*	..... *Att'y for Appellant.* ..... *Att'y for Respondent.*

Hamilton having delivered a large number of small logs belonging to him, at Bridges' mill to be sawed, Bridges wrongfully converted the same into railroad ties, for purposes of his own, and refuses to give them up. Instead of bringing replevin, Hamilton brought this action in trover. The Court instructed the jury that plaintiff was entitled to recover only the value of the logs as they were when brought to the mill, and not their value in their present condition, which would be much greater. Plaintiff excepts to the ruling of the Court. Verdict and judgment were in accordance with the instructions of the Court. Plaintiff appeals.

No. 23.

SUPREME COURT—CORNELL UNIVERSITY.

MAXWELL,
Plaintiff and Appellant,

vs.

A. & L. R. R. CO.,
Defendant and Respondent.

Att'y for Plaintiff.

Att'y for Defendant.

Maxwell having delivered a number of small logs belonging to him at the mill of one Bridges to be sawed, Bridges converted the same into railroad ties and sold the same to defendant, a purchaser in good faith and for full value. Plaintiff demanded the ties of the R. R. Co. which demand was refused and this action was brought in trover.

The Court instructed the jury that plaintiff could recover only the value of the logs in the shape they were in when taken by Bridges and not the increase in value due to the labor of Bridges, to this ruling plaintiff excepted. Verdict and judgment were in accordance with the ruling of the Court and plaintiff appeals therefrom to this Court.

No. 24.

SUPREME COURT—CORNELL UNIVERSITY.

MANCHESTER, *Plaintiff and Respondent.*	..... *Att'y for Respondent.*
vs.	
MILLARD, *Defendant and Appellant.*	..... *Att'y for Appellant.*

One Morgan was the owner of a certain parcel of real estate on which was a mortgage for about its full value, duly recorded. Desiring to improve the premises and for greater convenience of use he had a well driven, and bought of Manchester a wind-mill. At the time of such purchase Morgan gave Manchester a chattel mortgage on the mill for the purchase money. The mill was soon thereafter put in place over the pump, securely fastened in the earth, and used thenceforth for the purpose intended. The law as to chattel mortgages was duly complied with by Manchester. About six months after this transaction the real estate mortgage was foreclosed and defendant Millard became the purchaser at the sale, having no actual notice of the chattel mortgage, and is now the owner of the land. Manchester has now foreclosed his chattel mortgage, and having complied with all formalities, and become the purchaser at the sale has made demand upon Millard for the mill in question, which demand was refused. This suit is brought in trover to recover the value of the mill. From a judgment in favor of Manchester, Millard appeals to this court.

Statement of Cases to be argued in Cornell University Court, Fall Term, 1895.

No. 25.

SUPREME COURT—CORNELL UNIVERSITY.

SMITH,
Plaintiff,
vs.
BURR,
Defendant.

..... *Att'y for Plaintiff.*

..... *Att'y for Defendant.*

Indebitatus assumpsit for work, labor and services. The defendant employed the plaintiff as a clerk at a salary of $125 a month. Towards the end of the first month the plaintiff assaulted two of his fellow clerks at the defendant's place of business, whereupon the defendant discharged him. The plaintiff then sued upon a *quantum meruit* for the time which he actually served. The plaintiff was non-suited and moves for a new trial on the minutes.

No. 26.

SUPREME COURT—CORNELL UNIVERSITY.

REILLY,
Appellant.
vs.
FREEMAN AND VARKER,
Respondents.

Att'y for Plaintiff.

Att'y for Respondents.

Suit for a dissolution of partnership and final accounting. On the trial it appeared that the parties prior to May 1, 1894, had entered into a partnership to operate in stocks. On May 1, 1894, the assets were 6,000 shares of the Ithaca Gas Light Company's stock, 3,000 standing in Freeman's name and 3,000 in Varker's name, and there were no liabilities. On that day Varker sold 2,000 shares, and subsequently lost the proceeds in private speculations. A decree was entered dissolving the partnership and directing each of the defendants to transfer to the plaintiff 1,000 shares, and in case of failure of either defendant to do so, that execution issue against him for the value of the 1,000 shares, or so many thereof as he should fail to transfer. From this decree the plaintiff appeals and asks that it be modified so as to direct further that in case Varker fails to transfer the 1,000 shares and execution against him be returned *nulla bona* the plaintiff may have execution against Freeman for the value of one-half the shares which Varker may fail to transfer as directed by the decree.

No. 27.

SUPREME COURT—CORNELL UNIVERSITY.

ROBERTS,
Plaintiff and Appellant,
vs.
PATTERSON,
Defendant and Respondent.

Att'y for Appellant.

Att'y for Respondent.

Assumpsit for money had and received to the plaintiff's use. It appeared on the trial that in December, 1894, the plaintiff purchased of the defendant 1,000 packages of teas, identified by marks and numbers, then in the warehouse of the Atlantic Storage Co., insured under a general policy taken out by that company for whom it may concern, covering goods belonging to it or held on storage. The company had notice of the sale and charged the storage to plaintiff. The goods were destroyed by fire, the storage company collected insurance on the plaintiff's goods and sent the proceeds to the defendant. He failed to pay them to the plaintiff, who then sued the storage company and had judgment. The judgment was returned *nulla bona* and the company was then wound up in insolvency proceedings and paid no dividend to creditors. On proof of these facts the trial court directed a verdict for the defendant. The plaintiff appeals from the judgment entered on the verdict.

No. 28.

SUPREME COURT—CORNELL UNIVERSITY.

WHEELER,
Plaintiff and Appellant,

vs.

PENNIMAN,
Defendant and Respondent.

Att'y for Plaintiff.

Att'y for Defendant.

A statute of the state of Minnesota provides that in case of the insolvency of a corporation organized under its laws the stockholders shall be liable to creditors of the corporation in a sum equal to the face value of the stock held by them severally, and that the liability may be enforced by the creditor directly against any stockholder by an action in contract. The defendant is a resident of the state of New York and the action is brought there. The complaint set out the statute and facts showing that the case was within the provisions of the statute. The defendant demurred to the complaint and the demurrer was sustained. The plaintiff appeals.

No. 29.

SUPREME COURT—CORNELL UNIVERSITY.

RAILROAD COMPANY, *Plaintiff and Appellant.*	*Att'y for Appellant.*
vs.	
VAN AUKEN, *Defendant and Respondent.*	*Att'y for Respondent.*

Trover for ten bonds. In June, 1880, one hundred miles of the plaintiff's line was graded and ready for the rails. The plaintiff was desirous of securing the interest of the defendant in its undertaking, and so offered to give him a commission of ten of its bonds if he would furnish a credit in the sum of $200,000 to buy rails for the road. The defendant agreed to furnish the credit, and the plaintiff delivered the bonds. On August 1, 1880, the plaintiff ascertained that the defendant had taken no steps toward furnishing the credit, and the plaintiff then bought the rails itself, notified the defendant thereof and demanded the ten bonds, which the defendant refused to deliver. On proof of these facts the court directed a verdict for the defendant. From the judgment entered on the verdict the plaintiff appeals.

No. 30.

SUPREME COURT—CORNELL UNIVERSITY.

PERKINS, *Respondent.* vs. JOHNSON, *Appellant.*	..... *Att'y for Respondent.* ..... *Att'y for Appellant.*

Suit for an accounting against a trustee. The bill showed that the defendant trustee for the plaintiff lent moneys belonging to the trust to Bleichroeder & Co., private bankers, at interest, without security, that the bankers were in good financial standing at the time of the loan, but failed in the panic of 1893, and were able to pay but 40 cents on the dollar. The bill prays that the defendant account and be charged with the moneys so lost. A demurrer to the bill was overruled. The defendant appeals from the decree overruling the demurrer. There is no statute affecting the case.

No. 31.

SUPREME COURT—CORNELL UNIVERSITY.

WILKINS,
Plaintiff and Respondent,
vs.
RAILROAD CO.,
Defendant and Appellant.

Att'y for Respondent.

Att'y for Appellant.

Case. On the trial it appeared that the plaintiff was on his way from Buffalo to New York to make a payment due the next day in order to bind a contract. On arrival at Ithaca he was wrongfully ejected from the defendant's train. It was late at night and raining. The street cars had been stopped by an accident in the power house and no conveyance was obtainable at the station. He walked to the Ithaca House, became very sick from the exposure and in consequence was unable to make the payment in New York. The plaintiff asked the court to charge the jury that he was entitled to recover as damages the price of the ticket to New York, the hotel bill and physician's bill at Ithaca, the profits of the contract which he had lost by reason of failure to make the payment, and a sum of money to be determined by the jury to compensate him for shock and injury to his feelings, and loss of time, if any, of all of which there was evidence. The court so charged, to which the defendant excepted. The defendant appeals from the judgment.

No. 32.

SUPREME COURT—CORNELL UNIVERSITY.

MARY WHITE, *Appellant,*
vs.
LOUISE GRANT, *Respondent.*

Att'y for Plaintiff.

Att'y for Defendant.

Case. The plaintiff alleged in the declaration that on June 24, 1890, she was married to Alfred White, that thereafter the defendant had alienated the affections of the said Alfred White from the plaintiff, and had induced him to leave the plaintiff, and that being so induced he had left the plaintiff and had ceased to live with her to her damage, etc. The defendant demurred to the declaration. The demurrer was sustained. Appeal from the judgment on the demurrer.

A statute permits married women to sue and be sued as if sole.

Statement of Cases to be argued in Cornell University Court, Winter Term, 1896.

No. 33.

SUPREME COURT—CORNELL UNIVERSITY.

SMITH, *Plaintiff,*	..... *Att'y for Plaintiff.*
vs.	
JONES, *Defendant.*	..... *Att'y for Defendant.*

Plaintiff is the wife of S, her agent, who carries on for her the business of selling tombstones in a store owned by her. S is an experienced salesman but had failed and so is now conducting the business for his wife. She takes no part in the management thereof.

Defendant is a friend of S, who brings liquor to the store and gives same to S, who thereby becomes intoxicated, neglects his customers and sleeps during business hours to the injury of plaintiff's business. Plaintiff notifies defendant to keep away from the store but this he refuses to do.

Action to recover damages. Complaint sets forth facts as above. Defendant demurs on the ground that they do not constitute a cause of action.

No. 34.

SUPREME COURT—CORNELL UNIVERSITY.

FOWLER, *Respondent.* vs. THE PLOW CO., *Appellant.*	..... *Att'y for Respondent.* ..... *Att'y for Appellant.*

Plaintiff contracted with defendant to deliver at its warehouse ten thousand bushels of wheat for 60c. per bushel, at the rate of 500 bushels per week, payable on delivery.

Defendant is a manufacturing corporation organized for and carrying on the business of making and selling plows. The wheat was purchased as a speculation. The market price of wheat rose to $1.00 per bushel and remained at that figure after plaintiff had delivered 1000 bushels on his contract. He thereupon repudiated same and refused to make further deliveries.

Action to recover $600 for wheat delivered. Defense breach of contract and counterclaim for damages sustained thereby. Time for complete delivery had elapsed when action was begun. The court directed the jury to render a verdict for the plaintiff for $600, and refused the request of the defendant to charge (a) that plaintiff could not recover upon the evidence, (b) that defendant was entitled to recover from plaintiff the damages sustained by reason of his breach of contract, to all of which defendant excepted.

Appeal from judgment for plaintiff, and order denying defendant's motion for a new trial.

No. 35.

SUPREME COURT—CORNELL UNIVERSITY.

DOLAN,
Plaintiff and Respondent.
vs.
ROBARTES,
Defendant and Appellant,

.....
Att'y for Respondent.

.....
Att'y for Appellant.

Defendant purchased goods of the supposed firm of Dolan & Co. In fact the business was transacted by Dolan alone under such designation. Action to recover for the purchase price of the goods. Under a statute in force in the state a person who uses the designation "& Co." when no actual partner is represented thereby, is guilty of a misdemeanor.

At the close of the evidence establishing the above facts, defendant moved to dismiss the complaint on the ground that plaintiff was violating the law of the state. Refused. Exception. Judgment for the plaintiff, from which and from order denying his motion for a new trial, defendant appeals.

(No. 36.)

SUPREME COURT—CORNELL UNIVERSITY.

WILLIAMS, *Plaintiff and Respondent,* *vs.* WILLIAMS, *Defendant and Appellant.*	..... *Att'y for Respondent.* ..... *Att'y for Appellant.*

Suit in equity for injunction, and other relief. Defendant is the father of plaintiff. He owns a large farm in Tompkins Co. The parties entered into an oral agreement that plaintiff should have the use of said farm during defendant's life, and the title thereto at his death, on condition that he (plaintiff) should properly support defendant during his life. In pursuance of such agreement plaintiff broke up housekeeping in the State of Michigan, where he then resided, came to live with his family on said farm and work the same, and fully performed all the agreements on his part as to his father's support for a period of about three years.

Defendant then began to advertise said farm for sale, without the consent of plaintiff, and to seek a purchaser therefor, whereupon plaintiff brings this action to restrain defendant from conveying said farm, and to compel the execution of a conveyance of said farm to him, conditioned upon the performance of said covenants during the life of defendant.

Judgment accordingly, from which defendant appeals.

No. 37.

SUPREME COURT—CORNELL UNIVERSITY.

IN THE MATTER
OF
THE ESTATE OF SMITH,
DECEASED.

Att'y for Appellant.

Att'y for Respondent.

Appeal from decree of Probate Court.

Smith, the deceased, was murdered by his son, A, in order that A might come speedily into possession of his share of his father's estate. After the commission of the crime, A conveyed all his interest in said estate to B, the attorney who defended him on the trial, in payment for his professional services. C, the only other heir and next of kin of Smith, contended that A's assignee could take no part of the estate under the statute of distributions.

The Court made its decree accordingly, from which B appeals to this court.

No. 38.

SUPREME COURT—CORNELL UNIVERSITY.

DUNCAN, *Plaintiff and Respondent.*	..... *Att'y for Respondent.*
vs.	
WHITE, *Defendant and Appellant,*	..... *Att'y for Appellant.*

Defendant is a retail druggist. He ordered of a reputable firm of wholesale druggists a quantity of a drug known as Rochelle salts, and received from them a package of material resembling Rochelle salts in appearance and labelled as such. Defendant's clerk, a skilled pharmacist, opened package, examined contents without testing same and put same in the jar in which Rochelle salts were kept for sale in said store. Defendant sold a portion thereof to plaintiff believing the same to be Rochelle salts, and plaintiff with same belief administered a dose thereof to himself. The drug was not Rochelle salts, but a poisonous substance and its effect was to cause plaintiff pain and suffering and injure his health.

Action to recover damages. Verdict, $1000. From judgment entered thereon, and order denying new trial defendant appeals.

No. 39.

SUPREME COURT—CORNELL UNIVERSITY.

TILLINGHAST,

vs.

HOLLIS, *et al*, as officers and members of the State Association of Master Plumbers.

Att'y for Plaintiff.

Att'y for Defendants.

Plaintiff, a master plumber engaged in the business of plumbing in the city of Parma. Jones & Co. of the same place are the only wholesale dealers in plumbers' supplies doing business within one thousand miles of plaintiff's place of business. All the other retail plumbers in Parma belong to the State Association of Master Plumbers, but plaintiff is refused membership therein. By a resolution adopted by said association the members thereof agreed to withdraw their patronage from any dealer selling supplies to any others than members of the association. Pursuant to said resolution Jones & Co. notify plaintiff that they can no longer fill his orders for supplies. By reason thereof plaintiff is unable to obtain materials to fill orders as promptly as the other plumbers in Parma, and loses trade in consequence.

Complaint alleging above facts, and that such action was taken by defendants to prevent plaintiff from buying supplies and to ruin his business. Demands judgment that defendants be restrained from further interference with his business and that they be directed to rescind the said resolution. Demurrer that complaint does not state facts sufficient to constitute a cause of action. Judgment for defendants, from which plaintiff appeals to this court.

No. 40.

SUPREME COURT—CORNELL UNIVERSITY.

PEOPLE, *Respondents.*	..... *Att'y for Respondent.*
vs.	
WOODS, *Appellant.*	..... *Att'y for Appellant.*

Appeal from conviction of petit larceny. It appeared from the evidence that defendant, a hackman, was employed by A to carry him from his home by conveyance to the railroad station. Arriving at such destination A left with defendant his overcoat to be returned to his home, which defendant agreed to do, but instead he took same to a pawn shop and obtained a loan thereon. The court charged the jury if they found that A so delivered his coat to the defendant, that defendant had only the custody thereof, and if he so disposed of the same he was guilty of larceny. Exception. Embezzlement is a separate statutory offence in the jurisdiction where this offence occurred.

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No. 41.

SUPREME COURT—CORNELL UNIVERSITY.

HOUGH, *Plaintiff.*	..... *Att'y for Plff. and Resp.*
vs.	
STREET CAR CO. *Defendant.*	..... *Att'y for Deft. and App't.*

Plaintiff while driving across defendant's tracks was struck and injured by a car moved by electricity. Plaintiff gave evidence tending to show the negligence of the motorman. Defendant gave evidence tending to show plaintiff's contributory negligence. At plaintiff's request the court charged as follows:

"If you find that the plaintiff was guilty of negligence in driving upon the defendant's tracks under the circumstances disclosed by the evidence, nevertheless the defendant would still be liable if the motorman in charge of the car saw, or by the exercise of due care could have seen, the peril of plaintiff in time to avoid injuring him."

To this charge defendant excepted, and assigns it as error in this appeal from a verdict and judgment for plaintiff.

No. 42.

SUPREME COURT—CORNELL UNIVERSITY.

ROLOFF, *Plaintiff.* vs. STEWART, *et al.*, *Defendants.*	..... *Att'y for Plff. and Resp.* ..... *Att'y for Deft's and App'ts.*

Action for damages for libel, for the publication of the following: "The undersigned, members of the Minister's Conference of the city of A, urgently request all Christian parents to refrain from patronizing the Roloff Institute in this city, because of the ungodly and immoral practice indulged in by the manager, teachers and students of that school in holding dances at such school to which students and other young persons are invited, in giving instruction in such immoral practice, and in thus offending the moral sense of the community, corrupting the youth, and setting at defiance the teachings of Christianity." No special damages were pleaded. Defendant answered, alleging the truth of the statement, and that it was made by them in the discharge of their legal and moral duty as ministers of the gospel and teachers of morality. The court left to the jury the question as to whether dancing is an immoral practice, corrupting the youth, etc. Verdict for plaintiff. Defendants appeal.

No. 43.

SUPREME COURT—CORNELL UNIVERSITY.

PRENTISS, Adm'r, *Plaintiff.*
vs.
RAILWAY CO., *Defendant.*

Att'y for Plff. and App't.

Att'y for Deft. and Resp.

Action to recover for wrongfully causing the death of plaintiff's minor son. Defence, that the death was caused by the combined negligence of defendant and plaintiff, and that plaintiff is the sole beneficiary under the statute giving the cause of action. The evidence disclosed that the accident was due to the negligence of defendant in not giving a signal at a railway crossing, combined with the negligence of plaintiff (who was driving over the track in a vehicle occupied by himself and the son) in not stopping to look and listen. There being no dispute as to these facts, the court directed a verdict for defendant, and plaintiff appeals.

No. 44.

SUPREME COURT—CORNELL UNIVERSITY.

INGERSOLL, *Plaintiff.*	*Att'y for Plff. and Resp.*
vs.	
KENNEDY, *Defendant.*	*Att'y for Deft. and App't.*

Defendant engaged plaintiff's services for one year as teacher in a private school at a salary of one thousand dollars. At the expiration of six months a case of small-pox broke out in the school, and other cases appeared in the vicinity, in consequence of which the defendant closed the school for the rest of the year. Plaintiff brings this action for his agreed salary of one thousand dollars, and recovered judgment for that amount. The trial court refused to charge that in case the epidemic was so dangerous as to warrant the defendant in closing the school the plaintiff could recover only the reasonable worth of the services actually rendered. Defendant appeals.

No. 45.

SUPREME COURT—CORNELL UNIVERSITY.

ELKINS, *Plaintiff.*	..... *Att'y for Plff. and App't.*
vs.	
FORWOOD, *Defendant.*	..... *Att'y for Deft. and Resp.*

Defendant telegraphed plaintiff: "Ship me two thousand barrels Elkin's XXX flour." By mistake of the telegraph operator, the telegram received by plaintiff read "ten thousand barrels." Plaintiff shipped the ten thousand barrels and defendant refused to receive the consignment because not in accordance with his order. Plaintiff brings an action for the price of the ten thousand barrels, and is non-suited. Plaintiff appeals.

No. 46.

SUPREME COURT—CORNELL UNIVERSITY.

ABBOTT,
Plaintiff.

vs.

DOANE,
Defendant.

Att'y for Ptff. and Resp.

Att'y for Deft. and App't.

Action upon a promissory note. Defence, want of consideration. Plaintiff gave his accommodation note to a corporation, which discounted it at bank, and left it unpaid at maturity. Defendant, being a stockholder, director and creditor of the corporation, wishing for personal reasons of his own, to have the note paid at once, gave his own note to plaintiff, on consideration that the plaintiff should take up the note at the bank. The agreement was carried out, and defendant now contends that his note to plaintiff was without consideration, because plaintiff was already bound in law to take up the note at the bank. Judgment for plaintiff. Defendant appeals.

This case may be regarded as an appeal from the judgment given in 163 Mass., 433.

No. 47.

SUPREME COURT—CORNELL UNIVERSITY.

CONVERSE, *Plaintiff.*	..... *Att'y for Plff. and Resp.*
vs.	
DANIELS, *Defendant.*	..... *Att'y for Deft. and App't.*

Plaintiff contracted with defendant to repair defendant's house and to build an addition thereto, payment to be due "when the house is completed, ready for occupancy." Plaintiff completed the repairs on the old part and notified the defendant that it was ready for occupancy, but the latter did not move into it or do any act implying acceptance. At this time the new part was also completed except that mouldings for hanging pictures had not been placed as called for by the specifications. Two days later, while affairs were in this condition, the whole structure was destroyed by fire. Plaintiff sues for the contract price and obtains judgment. Defendant appeals.

No. 48.

SUPREME COURT—CORNELL UNIVERSITY.

GREGORY, *Plaintiff.*	..... *Att'y for Plff. and Resp.*
vs.	
TELEGRAPH CO., *Defendant.*	..... *Att'y for Defl. and App't.*

Action for damages for defamation. Defendant received from a newspaper correspondent a message addressed to a newspaper which stated that plaintiff had been convicted of a felony of a heinous nature. This message was telegraphed by defendant and delivered to the newspaper and there published. In fact the statement was false. The plaintiff had a verdict and defendant appeals.

Statement of Cases to be argued in Cornell University Court, Winter Term, 1896.

No. 49.

SUPREME COURT—CORNELL UNIVERSITY.

CHATTERTON, *Respondent.*	*Att'y for Respondent.*
vs.	
RAPID TELEGRAPH CO., *Appellant.*	*Att'y for Appellant.*

B sent a dispatch to plaintiff over defendant's telegraph line from X, where plaintiff's son was attending college, to Y, his home, informing him that his son had met with a serious accident and was in a critical condition. The dispatch reached defendant's office at Y at 3 p. m. The next train to Y left at 4 p. m. Plaintiff's office was four blocks from the telegraph office. Owing to the absence of one messenger boy on a holiday and the unreasonable delay of the others in returning from errands, the dispatch was not sent out to plaintiff until 4.15 p. m. Only one train per day ran from Y to X. On the following day the plaintiff, with the family physician, went to X, but his son had died some hours after the arrival of the train on the preceding day.

Action to recover for car fare of plaintiff and physician, charges of physician and mental suffering and anguish caused by inability to be present at son's death. Verdict, $3,000. Motion for new trial on exceptions denied. Appeal.

No. 50.

SUPREME COURT—CORNELL UNIVERSITY.

PEOPLE, *Respondent.* vs. WALLACE, *Appellant.*	..... *Att'y for Respondent.* ..... *Att'y for Appellant.*

Indictment for assault. It appeared upon the trial that defendant had aimed an unloaded shot-gun, with a broken and useless lock, at complainant who was about to enter a row-boat to cross a stream 200 yards wide to come to the side upon which defendant stood, and had accompanied this action with other threatening gestures, indicating a purpose to shoot at complainant if he undertook to start across the stream. That complainant did not know the nature of the gun, nor the fact that it was unloaded; that because he feared to run the risk of being fired upon he desisted from his purpose to cross the stream. Verdict, guilty. Appeal.

No. 51.

SUPREME COURT—CORNELL UNIVERSITY.

MARTIN,
Appellant.

vs.

BARNARD,
Respondent.

.....
Att'y for Appellant.

.....
Att'y for Respondent.

Action for foreclosure of mortgage. Motion to set aside deed given on foreclosure sale. The mortgage was given in 1886, fell due in 1892, and foreclosure proceedings were started in January, 1893, judgment obtained in June, 1893. The proceedings on the sale were conducted under the law in existence when the mortgage was given. The plaintiff waited until six months after judgment, then procured an order of sale, had the property sold pursuant to the order, became the purchaser at the sale and received a deed at once from the proper officer—deed dated Feb., 1894. It appears that in March, 1893, the law was changed so as to permit a sale at any time after judgment, but forbidding the giving of the deed until eighteen months after the sale—giving a much more extended time to the mortgagor in which to redeem. Held on the motion that the law of March, 1893, governed the sale, that the change in the law did not "impair the obligation of a contract" and that the deed should be set aside. From this decision plaintiff appeals to this court.

No. 52.

SUPREME COURT—CORNELL UNIVERSITY.

MARSDEN, *Appellant.* vs. BRADNER, Sheriff, etc., *Respondent.*	*Att'y for Appellant.* *Att'y for Respondent.*

One Brown was the owner of certain premises in the State of ——, consisting of a house and lot. The house was fitted up for lighting by means of gas, having brackets, gas jets, and chandeliers, of the kind in common use in the locality, screwed on to the pipes projecting from the wall and easily removable. Brown sold the premises to plaintiff, Marsden, giving a deed, and thereafter, but before actual possession was transferred, defendant, as sheriff, levied under an execution against Brown upon the gas fixtures and seized the same, unscrewing and removing them. Marsden brought this action of replevin but failed in the court below, the judge holding that the property in question was personal property. Plaintiff appeals to this court. The question has never been raised in the state before, and there are no statutes bearing upon it.

No. 53.

SUPREME COURT—CORNELL UNIVERSITY.

THE T. R. R'Y CO., *Respondent.* vs. HAMILTON, Sheriff, &c., *Appellant.*	..... *Att'y for Plaintiff.* ..... *Att'y for Defendant.*

The plaintiff, the T. R. R'y Co., owns and operates a railway about thirty miles long, entirely in the state of ————, and connecting two considerable towns situated on large rivers. There are no railways connecting at either terminus, or anywhere along the line. Under an execution on a judgment of $10,000, against the Company, the defendant, Hamilton, as sheriff, levied upon the locomotive of a freight train just about to start on its trip, derailed the machine, and put an officer in charge. This action is brought to recover damages against the sheriff for trespass on the realty and for the value of the engine. It was proved that there was plenty of property of the Company, purely personal in its character, and known to the sheriff, out of which the judgment might have been satisfied, and it was claimed that the property taken was a fixture constituting part of the Company's real estate. The law of the state provides that an execution cannot be levied on real property unless sufficient personalty cannot be found to satisfy it. The court held that the locomotive was real property, and the plaintiff recovered. Defendant appealed to this court from the judgment. It is the first time that the question has been raised in the state and there are no constitutional or statutory provisions on the subject.

No. 54.

SUPREME COURT—CORNELL UNIVERSITY.

SEYMOUR, *Plaintiff and Appellant,* *vs.* K. & O. R. R. CO., *Defendant and Respondent.*	..... *Att'y for Plff. and App't.* ..... *Att'y for Deft. and Resp.*

A city ordinance of Columbia requires all buildings within a certain district known as the "fire limits," to have slate or metallic roofs. Another ordinance prohibits trains passing through the city at a greater rate of speed than six miles an hour. Def't Co. ran its train at the rate of more than ten miles an hour when within the city limits, causing its engine to emit burning sparks, some of which fell on the roof of plff's house—which was within the "fire limits" and had a shingle roof. In a suit for damages for loss sustained by plff, through a resulting fire, the pl'ff asked the court to instruct the jury as a matter of law that the non-compliance of pl'ff with the city ordinance was not of itself negligence, which instruction the court refused to give, but left it to the jury to determine whether the pl'ff's action was negligent. To the court's refusal to give the instruction asked and to the court's giving the other instruction, the pl'ff at the time objected and excepted. Verdict for def't. Appealed.

No. 55.

SUPREME COURT—CORNELL UNIVERSITY.

HARLEY, *Respondent.*

vs.

LAMPKIN, *Appellant.*

Att'y for Respondent.

Att'y for Appellant.

Pl'ff purchased from one Harrison 200 bu. of wheat which was in a bin containing 500 bu. He paid for the wheat at the time of purchase but left it in the original bin to be called for later. Subsequently Harrison sold the whole lot to defendant who paid part of the purchase price and removed the 500 bu. of wheat whereupon pl'ff demanded of defendant his 200 bu. which def't refused to give up. In a suit for damages for conversion the court instructed the jury that if they found that it was the intent of the pl'ff and Harrison, that the title to the 200 bu. of wheat should pass to pl'ff at the time of his purchase then the jury should find for the pl'ff, to which instruction def't objected and excepted. Verdict for pl'ff. From this def't appeals.

No. 56.

SUPREME COURT—CORNELL UNIVERSITY.

ATKINS, *Respondent.*	*Att'y for Respondent.*
vs.	
ORTON. *Appellant.*	*Att'y for Appellant.*

In September, 1893, plaintiff leased certain premises of one Williams for the term of two years, with the option of renewing the lease for another two years at the expiration of the first term. At the close of the first term, however, he neglected and refused to renew, but remained wrongfully in possession. In November, 1895, Williams sold the premises to defendant. Plaintiff then offered to take a renewal of the lease, but this was refused and he was summarily ejected, permission being refused to him to take away certain trade fixtures which he had annexed to the premises and which it is conceded he might have removed at any time before the close of his original term. Plaintiff brings this action to recover the value of such fixtures and succeeds in the court below. Defendant appeals to this court.

No. 57.

SUPREME COURT—CORNELL UNIVERSITY.

WHITE,
Respondent,
vs.
ROBERTS,
Appellant.

Att'y for Respondent.

Att'y for Appellant.

Harris owed White one hundred dollars for work done on a schooner belonging to the latter, and as security for which he held possession of the boat, claiming a lien. Roberts had a chattel mortgage on the same boat for more than its value and was anxious to have it returned to Harris in order to sail and earn freight with which to reduce and pay the mortgage. Roberts promised White verbally to pay the hundred dollars to him if Harris did not within sixty days, provided he, White, would surrender his lien and give up the boat to Harris. White did so. Harris was bound to apply all earnings above expenses upon the mortgage. Harris did not pay. White sued Roberts. Defense, the Statute of Frauds. Judgment for pl'ff. Def't appeals to this court.

No. 58.

SUPREME COURT—CORNELL UNIVERSITY.

HOLMES,
Appellant.

vs.

GRIGGS,
Respondent.

Att'y for Appellant.

Att'y for Respondent.

Griggs, a farmer, had a stack of hay in his field. Holmes offered him seventy-five dollars for it as it stood. Griggs accepted. No money was paid or writing signed. Griggs said, I deliver you this hay. Holmes said, I accept it, and wrote his name on a shingle and put it in the stack and carried off in his hand a wisp of the hay. Thereafter and in due season Holmes tendered the seventy-five dollars and demanded the hay. Griggs refused and sold it elsewhere. Holmes sued. Defense, Statute of Frauds. Judgment for defendant. Plaintiff appeals to this court.

No. 59.

SUPREME COURT—CORNELL UNIVERSITY.

SMITH, *Respondent.*	..... *Att'y for Respondent.*
vs.	
JONES, *Appellant.*	..... *Att'y for Appellant.*

Jones owed Smith one thousand dollars, for which Smith held the note of Jones to become due in ten days. Johnson owed Jones one thousand dollars, for which Jones held Johnson's note due in sixty-five days. Smith agreed to accept the note of Johnson, accompanied by a guaranty of payment by Jones in discharge of the latter's debt to him, Smith. He took the note of Johnson and a verbal guaranty of its payment by Jones, and gave up and surrendered to the latter his own note which was cancelled. Johnson did not pay and Smith sues Jones on his guaranty. Defense, the Statute of Frauds. Judgment for plaintiff. Defendant appeals to this court.

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No. 60.

SUPREME COURT—CORNELL UNIVERSITY.

BROWN, *Appellant.*	..... *Att'y for Appellant.*
vs.	
SANFORD AND BARKER, *Respondents.*	..... *Att'y for Respondents.*

Bill in equity for an accounting and other relief. The bill alleged that in 1891 the parties constituted a co-partnership, that its assets were a salt well in Ithaca and an option to buy the lands, about six hundred acres, where the well was situated, that the title to the option was in the names of the defendants, that then by agreement of the parties it was decided to transfer the partnership property to a corporation in exchange for its stock, that the transfer was made and the defendants received a certificate of the stock therefor in their joint names, that no certificate was assigned to the complainant for his share, that the defendants and one Quackenbush to whom they assigned a single share of the stock were the sole directors in the corporation, that thereafter with the consent of the defendant Barker the defendant Sanford and one Foster took title under the options in their joint names and thereafter conveyed the lands to another corporation the Ithaca Salt Company, that for the transfer the defendants received each 1,500 shares in that corporation, that they delivered 250 of said shares to the plaintiff and represented that they were his fair

proportion, that he had no knowledge of the number of shares which they received till 1894, when he demanded 750 shares more of the defendants, and on their refusal to deliver them began this suit, that the defendant Barker had transferred all his shares and was insolvent, and the complainant prayed for a decree that the defendants account and that he have judgment for 750 shares against each of them. The bill was taken *pro confesso* but the court gave judgment for 375 shares only against each defendant. The complainant appeals and asks that the judgment be modified so as to conform to the prayer in the bill.

No. 61.

SUPREME COURT—CORNELL UNIVERSITY.

PEPPER, *Plaintiff.*	.....
vs.	*Att'y for Plaintiff.*
TAYLOR, *Defendant.*	.....
	Att'y for Defendant.

Contract. The case is submitted upon agreed facts as follows:

The defendant in Buffalo delivered, for transmission, at the office of the Western Union Telegraph Company in that city, the following despatch written on a blank furnished by the Company:

"BUFFALO, March 2nd, 1892.

JOSEPH PEPPER, 4 Wall St., N. Y.

Buy 1,000 shares Cleveland Air Line at one hundred and twenty for my account. LEMUEL TAYLOR."

This dispatch was delivered in due time to the plaintiff, who was a stock-broker. The word "twenty" was however, by negligent error of the Telegraph Company written "thirty" in the dispatch as delivered. The plaintiff purchased 1,000 shares of the stock at 130 and

notified the defendant thereof. The defendant, on learning of the purchase, at once disclaimed any interest in it. The Cleveland Air Line subsequently went into the hands of a receiver and the stock became valueless.

On the blank upon which the defendant wrote the despatch was printed conspicuously, among other things, the following words: "The business of telegraphing is subject to errors and delays, arising from causes which cannot at all times be guarded against. Errors and delays may be prevented by repetition for which half price extra is charged." The despatch in question was not repeated.

The Court may draw inferences of fact and give such judgment as the law requires.

No. 62.

SUPREME COURT—CORNELL UNIVERSITY.

AMERICAN SUGAR REFINING CO., *Respondent,*	*Att'y for Respondent.*
vs.	
FANCHER, *Appellant.*	*Att'y for Appellant.*

Appeal by the defendant from a judgment in favor of the plaintiff.

About a month before C. Burkhalter & Co. made a general assignment to this defendant for the benefit of his creditors, the plaintiff sold and delivered to them on credit a quantity of sugar at the agreed price of $19,124.41. The sale was induced by false and fraudulent representations made by C. Burkhalter & Co. as to their solvency.

Twenty-six days after the execution of the general assignment, plaintiff served upon the assignee a notice in writing rescinding the sale on account of the fraud and demanding a return of so much of the sugar as was then in the possession of the assignee, and that he account for and deliver to the plaintiff the proceeds of such goods as had been disposed of.

All the sugar except $2,400 worth was before the assignment sold and delivered to the customers of the firm upon various terms of credit, which had not then expired, and that which remained unsold plaintiff obtained possession of, after serving the notice of rescission, through an action brought for the purpose. Thereafter this suit was commenced, which has resulted in a judgment against the defendant for $11,809.83, which is adjudged to be a "first lien and charge upon any and all moneys and assets of every nature now or hereafter in the hands of said defendant, formerly of the said firm of C. Burkhalter & Co.," and the defendant is also directed to execute and deliver to the plaintiff instruments of assignment necessary to transfer all accounts and bills and claims receivable representing any portion of the merchandise sold by plaintiff to C. Burkhalter & Co.

No. 63.

SUPREME COURT—CORNELL UNIVERSITY.

N. Y. CENTRAL R. R., *Plaintiff in Error.*	
vs.	*Att'y for Pl'ff in Error.*
LOCKWOOD, *Defendant in Error.*	*Att'y for Def't in Error.*

This case is reported in 17 Wall., 357. It will be heard as upon a re-argument.

No. 64.

SUPREME COURT—CORNELL UNIVERSITY.

DANIEL,
Respondent.
vs.
PITTSBURGH RY. CO.,
Appellant.

Att'y for Respondent.

Att'y for Appellant.

This case is reported in 23 S. E. Rep., 327. It will be heard as upon a re-argument.

No. 65.

SUPREME COURT—CORNELL UNIVERSITY.

THOMAS,
Appellant.
vs.
STATE,
Respondent.

Att'y for Appellant.

Att'y for Respondent.

This case is reported in 32 S. W. Rep., 771. It will be heard as upon a re-argument.

No. 66.

SUPREME COURT—CORNELL UNIVERSITY.

LOUGH,
Appellant.
vs.
OUTERBRIDGE,
Respondent.

Att'y for Appellant.

Att'y for Respondent.

This case is reported in 143 N. Y., 271. It will be heard as upon a re-argument.

No. 67.

SUPREME COURT—CORNELL UNIVERSITY.

MILLS, *Plaintiff.*	..... *Att'y for Plaintiff.*
vs.	
BOND, BEECHER and WELLS, *Defendants*	..... *Att'y for Defendants.*

Case for conspiracy. The declaration alleged that the plaintiff was the owner of the steamship *Western Texas.* That the New York Transportation Co. was the owner of the steamship *Panther.* That on the night of February 6, 1894, the *Panther* ran into and sank the *Western Texas* without fault of the *Western Texas*, her officers or crew. That the plaintiff libelled the *Panther* to recover damages for the injury to the *Western Texas.* That before the trial of the suit the defendant, Bond, who was the owner of the *Panther*, and the other defendants, who were the pilot and look-out at the time of the collision, entered into a conspiracy, by the terms of which the defendants Beecher and Wells were to swear to a false alibi of the *Panther* at the trial. That they did so, and that in consequence the libel was dismissed, though in fact and truth the *Panther* did run into the *Western Texas* as alleged. Wherefore the plaintiff demands judgment for $40,000, the amount of the injury to the *Western Texas*, and the expenses of the proceedings in admiralty. Demurrer.

No. 68.

SUPREME COURT—CORNELL UNIVERSITY.

BROWN,
Respondent.
vs.
QUEEN INS. CO.,
Appellant.

Att'y for Respondent.

Att'y for Appellant.

Action upon a marine insurance policy issued in May, 1894, insuring the plaintiff in the sum of $5,000 upon the freight moneys to be earned by the barque *Florence* upon a voyage from Cardenas to New York. To prove the lading the plaintiff offered in evidence a bill of lading signed by the master reciting the receipt on board of 860 casks of rum to be carried from Cardenas to New York and there to be delivered to order or assigns, he or they paying freight in the gross sum of $5,000. The handwriting of the master was admitted but there was no proof of his death, but only that he had disappeared shortly after reaching New York, where he was brought by a vessel which rescued the master and crew of the *Florence*, who were found in an open boat off Hatteras. The bill of lading was admitted in evidence. The defendant excepted to the ruling. Verdict for the plaintiff. Appeal from the judgment.

No. 69.

SUPREME COURT—CORNELL UNIVERSITY.

LINCOLN NATIONAL BANK,
Plaintiff in Error.
vs.
PERRY,
Defendant in Error.

Att'y for Pl'ff in Error.

Att'y for Def't in Error.

This case is reported in 66 Fed. Rep., 887, and is to be heard as upon re-argument.

No. 70.

SUPREME COURT—CORNELL UNIVERSITY.

ITHACA TAILORING CO.,
Respondent.

vs.

BROWN,
Appellant.

Att'y for Respondent.

Att'y for Appellant.

Contract. The facts which appeared on the trial were that the plaintiff agreed to make to order for the defendant a suit of clothes to be satisfactory to the defendant for thirty-five dollars. When ordering the clothes the defendant said: "Who is to be the judge whether they are satisfactory or not?" To this the plaintiff's manager replied: "You are." The clothes were made and would have been satisfactory to a reasonable man, but the defendant refused to take or pay for them. Verdict directed for the plaintiff. Defendant appeals.